



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of:

██████████
c/o ██████████
██████████
██████████

DECISION

MPA/168904

PRELIMINARY RECITALS

Pursuant to a petition filed September 23, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability ["DFCHAA"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on November 24, 2015. At petitioner's request a Hearing scheduled for November 5, 2015 was rescheduled.

The issue for determination is whether DCHAA was correct to deny Prior Authorization ["PA"] for MA payment for a Positron Emission Tomography ["PET"] scan of petitioner's skull to mid-thigh.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████ (not present at November 24,
2015 Hearing)

c/o ██████████
██████████
██████████

Petitioner's Representative:

██████████, petitioner's daughter

██████████
██████████

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

BY: ██████████, Registered Nurse ["RN"] Consultant [Ms. ██████████ did not
appear at the November 24, 2015 Hearing, but submitted a letter dated November
4, 2015 with attachments]

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:
 Sean P. Maloney
 Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (66 years old) is a resident of Wood County, Wisconsin.
2. In October 2014 petitioner was diagnosed with cancer in the right kidney; in January 2015 his right kidney was surgically removed.
3. Baseline and follow-up Computed Tomography ["CT"] scans were done following the removal of petitioner's right kidney; on May 21, 2015 a CT scan was done of petitioner's abdomen, pelvis, and chest which revealed the presence of some nodules that were not definitely representative of metastasis but were concerning enough that follow-up was recommended ("a metastatic nodule would have to be a strong consideration" for chest). Exhibit #2; attachment #1.
4. On August 11, 2015 a CT scan was done on petitioner and a 1.2 cm soft tissue nodule was seen which "may represent disease recurrence;" the August 11, 2105 CT "demonstrated some areas of abnormality with suspicion for recurrence of disease." Exhibit #2; attachments #1 & #2.
5. On August 13, 2105 petitioner's provider, [REDACTED] of [REDACTED] located in Marshfield, Wisconsin requested PA (P.A. # [REDACTED]; [REDACTED] case file PA # [REDACTED]) for MA coverage of a Positron Emission Tomography ["PET"] scan of petitioner's skull to mid-thigh. Exhibit #2.
6. DHCAA denied the requested PET scan and sent a letter to petitioner dated August 14, 2015 and entitled *BadgerCare Plus Notice of Appeals Rights* informing him of the denial. Exhibits #1 & #2.

DISCUSSION

This is a denial of eligibility for services; it is not discontinuation of services. As with any eligibility denial, the burden is on petitioner to show that he is eligible for the requested services. *Lavine v. Milne*, 424 U.S. 577, 583-584 (1976). Petitioner has failed to do so.

By law, MA pays only for medically necessary and appropriate health care services when provided to currently eligible MA recipients. Wis. Admin. Code § DHS 107.01(1) (August 2015); See also, Wis. Stat. §§ 49.46(2) & 49.47(6)(a) (2013-14). In order for a service to be *medically necessary* it must meet several specific requirements. See, Wis. Admin. Code § DHS 101.03(96m) (December 2008).

In determining whether to approve or disapprove a request for PA the limitations imposed by pertinent federal or state statutes, rules, regulations, or interpretations must be considered. Wis. Admin. Code § DHS 107.02(3)(e)9. (August 2015). [REDACTED], a private radiology benefits manager, is authorized to administer PA for PETs. [REDACTED] uses approved national clinical guidelines for imaging services when making PA determinations. *ForwardHealth Update* October 2010 No. 2010-92. Those national clinical guidelines state that PET is not routinely indicated for initial diagnosis, staging, or restaging of renal cell cancer. [REDACTED] *Oncology Imaging Guidelines* ONC-77 ~ Renal Cell Cancer (RCC); Exhibit #2; attachment #3. In the event recurrence is suspected CT scans are prescribed. [REDACTED] *Oncology Imaging Guidelines* ONC-77 ~ Renal Cell Cancer (RCC – DNC-17.3 Restaging/Recurrence); Exhibit #2; attachment #3. Therefore, DCHAA's denial must be sustained.

CONCLUSIONS OF LAW

For the reasons discussed above, DCHAA was correct to deny PA for MA payment for a PET scan of petitioner's skull to mid-thigh.

THEREFORE, it is

ORDERED

that the petition for review herein be and the same is hereby DISMISSED.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 30th day of November, 2015

\sSean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 30, 2015.

Division of Health Care Access and Accountability

